IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 5571 OF 2004.
IN

CRIMINAL APPEAL NO. 1487 OF 2004.

Imran Nazir Khan ..Applicant.

vs.

The State of Maharashtra. ..Respondents.

Shri M.K. Kocharekar for the applicant.
Shri D.P.Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 12-1-2005.

ORAL ORDER:

1. Heard learned Counsel appearing on behalf of the Applicant and the learned A.P.P. for the State.

2. The applicant is convicted for the offences punishable under sections 395 and 397 of the Indian Penal Code and he is sentenced to undergo Rigorous Imprisonment for 7 years. The applicant is in custody since 24.3.2003 and has undergone 1 year and 8 months of the total sentence. The learned Counsel appearing for the applicant has submitted that the entire prosecution case rests on identification of the accused by the complainant in the identification parade. He submitted that the finding recorded by the trial Court regarding identity of the applicant-accused No.2 by P.W. 1 is contrary to what the

witness has stated in his examination- in- chief. He further submitted that there is no recovery at the instance of the applicant. He has further submitted that offence under section 395 of the I.P.C. is not made out as there were only 3 persons who have allegedly committed the said offence.

3. I have perused the evidence of P.W.1. He has stated that he has identified on person who was possibly driving the motor-cycle. The trial Court, however, in its finding has recorded that P.W.1 had identified the present applicant as a person who had got down from a white Maruti- 800 car. There is thus an obvious error committed by the trial Court regarding identity of the applicant. There is no recovery at the instance of the applicant. Further, the applicant has already undergone 1 year and 8 months of sentence. In these circumstances, I am of the view that the applicant is entitled to be released on bail.

4. Accordingly, the applicant is directed to be released on bail in the sum of Rs.5,000/- (five thousand) with one or two sureties in the like amount. Applicant shall, however, report to Mahim Police Station once in a week.